

REMARKS

This amendment amends claims which are subject to the final rejection in the Office Action dated July 1, 2004. The claims rejected in the Final Office Action were rejected as anticipated by either U.S. Patent No. 6,432,039 to Wardle, U.S. Patent No. 6,077,218 to Alferness or U.S. Patent No. 5,713,954 to Rosenberg et al. Wardle '039 describes a reinforcement device 10 which in the embodiment shown includes a drug delivery source 26 in the form of a subcutaneous drug reservoir. The drug reservoir is connected by tubes to the reinforcement device. Drugs are urged from the reservoir to the reinforcement device by a plurality of different mechanisms disclosed in the Wardle patent including bladders 24 which operate in response to cardiac rhythm and recoil balloons described with reference to Fig. 14. Alferness '218 shows a cardiac reinforcement device while Applicants do not believe Alferness '218 teaches drug delivery, the Examiner in the Final Office Action was of the opinion that Alferness described a delivery source in the form of a bioadhesive. Applicants do not believe Rosenberg '950 4 teaches a drug delivery system. Instead, a hydraulic pump 19 is connected to a reservoir for providing a pumping action to an artificial myocardium.

On page 4, the Examiner, in the final rejection noted that Applicants previous arguments (i.e., a delivery device on the jacket) were not recited in the rejected claims and would not rely upon non-claimed features for the purpose of allowability of claims. As will be discussed, Applicants believe this omission has been corrected in this amendment.

In the amendment, Applicants have cancelled certain claimed elements not deemed necessary to the claims or have rewritten certain elements in a manner which more clearly reflect the structure and method of the present invention. In each of the independent claims, the claims have been amended to recite that the jacket maintains contact with the heart throughout the cardiac cycle. Further, each of the claims has been amended that a delivery source of a therapeutic agent is provided directly on the jacket and positioned to impose the exterior surface of the heart. Further, each of the independent claims has been amended to recite that the delivery source is adapted for passive delivery of therapeutic agents to the heart. Support for passive delivery can be found on page 35, beginning at line 29 and continuing to the next page. It will be appreciative if the addition of passive delivery to the independent claims of the present invention is not intended to be an abandonment of any mention pertaining to active delivery of drugs and

Applicants reserve full rights to file any continuation or other applications directed to such features.

In view of the present amendment, Applicants respectfully submit that this application is now in condition for allowance. None of the cited references shows or suggests placing a therapeutic agent delivery source directly on the jacket such that the delivery source is in opposition to the external surface of the heart and the jacket is applied to the heart. Further, none of the cited references shows or suggests a passive delivery source (carried on the jacket and opposing the heart) for passive delivery of therapeutic agents to the heart. Wardle relies on a pumping action (originating with the pumping motion of the heart) to deliver drugs from a subcutaneous port through a tube and to its reinforcement device. Neither Rosenberg or Alferness suggest therapeutic agents.

By placing the drug delivery source of the therapeutic agents directly on the jacket, the jacket need not be precisely oriented on the heart and unlike Wardle, the material of the jacket can be gathered up, moved or otherwise arranged on the heart without disrupting the operation and delivery of the passive delivery of therapeutic agents to the heart. Further, Applicants' invention avoids the desirable additional surgical staff's replacing subcutaneous drug reservoirs of Wardle.

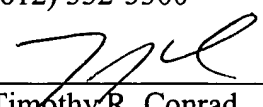
As presently amended, the claims of the present application present apparatus structure and method steps in detail which are not shown by any of the cited references in which provide a functional benefit over the prior art. Applicants respectfully submit that with these amendments, this application is in condition for allowance. Reconsideration and Notice of Allowance are solicited. Applicants reserve all rights to file additional continuation applications directed to other features disclosed in the present application.

Respectfully submitted,

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